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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, DOES 1 THROUGH 10, INCLUSIVE Defendants.	Case No. C 420 153 BRIEF IN OPPOSITION TO MOTION OF BENT CORYDON FOR RETURN OF DOCUMENTS AND FOR INSPECTION OF FIVE SPECIFIC DOCUMENTS MAINTAINED UNDER SEAL
MARY SUE HUBBARD, Intervenor.	
GERALD ARMSTRONG, Cross-Complainant, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California corporation, et al., Cross-Defendants.	Date: February 21, 1989 Time: 9:00 a.m. Dept: 56

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Bent Corydon, a non-party to this action, has filed two separate motions by two separate counsel concerning the records and files in this case. The first, a motion filed through counsel Paul Morantz, seeks to require the plaintiff Church to return to the court file the exhibits in this case, which were also a part of the underlying subject matter of this action, and which were returned to the plaintiff upon the written and in-court oral stipulations of the parties, pursuant to C.C.P. §1952(a). Corydon, through Morantz, further seeks access to the very five exhibits to which this court previously denied him access, despite the fact that Corydon has not sought to obtain the documents from the plaintiff through discovery in the ongoing civil litigation for which he conclusorily asserts the five documents may be relevant.[1/] We address the Corydon/Morantz motion in this memorandum.

Corydon's second motion, through counsel Federico Sayre and Toby Plevin, seeks to require the actual parties to this action to file with the court a copy of the Mutual Release and Settlement Agreement between them. Our memorandum in opposition to that motion is submitted separately.

Initially, plaintiff Church objects to Corydon's practice of appearing before this court through two separate counsel each of whom files separate pleadings on his behalf. Corydon is one person, and he ought to appear here with one set of counsel and file one set of pleadings.

Second, Corydon, as a non-party, lacks standing to file

1. Indeed, discovery has been stayed in that action. See supporting Declaration of Timothy Bowles.

motions before this court seeking, inter alia, to set aside the court's approval of a settlement of the case which included the return to plaintiff Church of the very documents (including trial exhibits) for which plaintiff brought suit to recover, or seeking to require the parties to file their Mutual Release Agreement. The parties and the court were aware of these facts and agreed to abide by them as part of the settlement process. Corydon does not have the right to file motions addressed to such matters.

Third, Corydon's motions are utterly frivolous, as we demonstrate below. He fails to cite governing statutory authority, miscites and misrepresents other statutes and cases, and misleads the court about the nature and course of proceedings in the cases for which he claims a need for discovery.

Fourth, Corydon attempts to weave an outrageously false picture of alleged improprieties by the actual parties to this action, and their counsel. His allegations of "obstruction of justice" and his undisguised innuendos that Church counsel stole or misappropriated court exhibits are without the slightest basis. Counsel for plaintiff cannot sit by and allow such distortions to go unrebutted, despite the unseemly nature of the ensuing dialogue. Once again, we implore the court to admonish Corydon and his various counsel to refrain from such improper and unprofessional behavior.

We now turn to the merits of the pending motion filed by Mr. Morantz.

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I. The Exhibits in this Case Were Properly Returned to the Plaintiff Pursuant to Stipulation and Court Order, in Accordance with C.C.P. §1952(a)

Corydon (through Morantz) argues that it was improper for this court, per Judge Breckenridge, to permit the return of the trial exhibits in this case to the plaintiffs because there presently is an appeal pending from the denial of damages to the plaintiff and intervenor. Corydon goes on to suggest by innuendo that somehow Judge Breckenridge was deceived into believing that the action had been settled in its entirety, including all appeals.

Corydon is wrong in both respects. Judge Breckenridge had the power to order the return of the documents at any time upon mutual stipulation of the parties. Moreover, he did so with full knowledge that an appeal was pending, and that the damage claim survived the settlement and might survive the appeal.

First, Corydon rather obviously and blatantly misstates the relevant law, citing C.C.P. §§ 1952.2 and 1952.3 for the proposition that the Superior Court lacks the power to return documents to a party where an appeal is pending, even upon the stipulation of the parties. Corydon ignores C.C.P. §1952(a), which explicitly and unambiguously confers such power upon a Superior Court at any time.

> (a) The clerk shall retain in his or her custody any exhibit or deposition introduced in the trial of a civil action or proceeding filed in the action or proceeding until the final determination thereof or the dismissal of the action or proceeding, except that the court may order the exhibit or deposition returned to the respective party or parties at any time upon oral stipulation in open court or by written stipulation by the parties or for good cause shown.

Section 1952.2, the section which Corydon pretends is the basic governing statute, provides additional powers to the court to return exhibits to a party at the conclusion of an action and in the absence of stipulation by the parties:

> Notwithstanding any other provisions of law, upon a judgment becoming final, at the expiration of the appeal period, unless an appeal is pending, the court, in its discretion, and on its own motion by a written order signed by the judge, filed in the action, and an entry thereof made in the register of actions, may order the clerk to return all of the exhibits and depositions introduced or filed in the trial of a civil action or proceeding to the attorneys for the parties introducing or filing the same.

Section 1952.3 also provides additional powers to the court to destroy or otherwise dispose of exhibits. Neither §1952.2 nor §1952.3 purport to limit the power of the court under §1952(a) to return exhibits to a party upon stipulation of all parties, at any time.[2/]

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2. Corydon's counsel is equally "creative" in his analysis of case law. He cites Vallejos v. California Highway Patrol (2nd Dist. 1979) 89 Cal.App.3d 781, 152 Cal.Rptr. 846 for the proposition that "public records" are preserved for "public use," and argues that the case somehow prohibits a Superior Court from sealing court documents or disposing of them in accordance with applicable statutes, such as C.C.P. §1952(a). Vallejos, however, has nothing to do with court records or exhibits, nothing to do with a court's power to seal documents and nothing to do with a court's power to order documents returned to their proper owner upon stipulation of the parties.

Rather, as stated by the court, the issue in Vallejos was "whether written traffic accident reports prepared and retained by the California Highway Patrol . . . were 'identifiable public records' [within the meaning of Government Code section 6252(d), relating to records of state and local agencies,] for which reproduction costs were limited to ten cents per page." 152 Cal.Rptr. at 847. Indeed, while the Vallejos court held that the traffic reports were "public records," within the meaning of the applicable statutory scheme, it recognized that the reports, like many "public records," were not subject to general public

(footnote continued)

Thus, Judge Breckenridge clearly had the power to order the return of the exhibits in this case to the plaintiff (their rightful owner or bailee) upon the stipulation of the parties to the case, even if an appeal were pending.

Second, a review of how and when the exhibits actually were returned to plaintiff discloses that Judge Breckenridge acted within his proper authority, and with full knowledge of the relevant facts and circumstances.

(a) It is well to remember that the exhibits at issue were more than mere evidence -- they were the very subject of the litigation. The plaintiff and the intervenor sued for the return of documents converted by Gerald Armstrong, which, plaintiffs asserted, were private as to Mr. and Mrs. Hubbard, the Church, and its members.[3/] It thus was entirely proper and predictable that any settlement of the plaintiffs' claims

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(footnote continued)

disclosure: "the general public is denied access to this information . . ." Id. at 849. Moreover, the statute at issue in Vallejos did not govern court records, but rather records of state and local agencies.

Corydon's references to People v. McKenna (2nd Dist. 1953) 116 Cal.App.2d 207, 255 P.2d 452 (Corydon's citation incorrect) and Government Code 6201 are equally inapposite. Section 6201 makes it a crime to steal or alter certain public records, including specifically documents in a court file. McKenna is an unremarkable case affirming a conviction under that statute. The exhibits here were returned to plaintiff Church by the clerk of the Superior Court pursuant to court order. Corydon's suggestion that the documents were "take[n]" in violation of criminal law is outrageous.

3. Indeed, the trial court found that the plaintiffs had made out prima facie cases of conversion, intrusion upon privacy, and breach of confidence and fiduciary duty. It denied relief solely on the basis of novel "justification" defenses based upon Armstrong's purported subjective state of mind.

against Armstrong would have included return of all the documents, including the several documents entered into evidence at the trial. Indeed, the relief sought by Corydon would deprive the plaintiffs of the very relief for which they sued and upon which they settled. Corydon has no right or standing to set aside such a proper settlement of a case.

(b) At the time of the settlement in the case, the plaintiffs' appeal from Judge Breckenridge's decision was pending in the Court of Appeal, 4th District. Approximately fifty exhibits had been transferred to the Court of Appeal in connection with the appeal on the issue of the plaintiff's right to the return of the documents.

(c) Accordingly, the settlement documents provided that the Superior Court would immediately return to the plaintiff Church all the documents, including trial exhibits, except the fifty or so documents then in the custody of the Court of Appeal. The written stipulation of the parties further provided that the remaining fifty documents would be returned to the plaintiffs immediately upon the return of such documents to the Superior Court, following the appeal.

(d) The settlement documents also made clear that the parties were <u>not</u> settling the plaintiff's damage claims; indeed, had they settled the damage claims the appeal would have been rendered moot, and the Court of Appeal would have been required to vacate the judgment and remand with instructions to dismiss the complaint as moot.

(e) Judge Breckenridge not only was aware of each of these facts, but he questioned counsel for all parties about them

before agreeing to the stipulations and ordering the return of the exhibits to the plaintiff Church. See generally the discussion at pp. 2-6 of the transcript of December 11, 1986, attached as Exhibit B to the Declaration of Timothy Bowles, attached. In particular, the court inquired as follows:

> The Court: What exhibits does the court of appeal have?
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> * * *
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> Mr. Hertzberg: Your Honor, I am informed that the court of appeal asked for 50 documents and they have them. So for the moment, presumably those could not be returned by the clerk of this [Superior] court.
>
> The Court: Well, it is the parties' agreement, then, but whatever they have got, the county clerk is no longer to be custodian of those and they will be returned to the parties by stipulation of the parties.
>
> * * *
>
> If it is what the parties want to do, it is okay with me.
>
> Mr. Peterson: And when the 50 documents come back from the court of appeal, they also will be turned over to the Church.
>
> The Court: I think that the court would require a further joint order or stipulation.
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> * * *
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> Mr. Hertzberg: We agree to that right now.
>
> Mr. Flynn: That would be agreeable.
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> The Court: Just by stipulation of the parties, it can be released at that time.
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> * * *
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> Mr. Flynn: It is apparently contemplated in paragraph 3 of the proposed order, Your Honor.
>
> The Court: Well, this implies that immediately when they are returned that they be immediately

turned over to the Church without any further [delay].

Mr. Flynn: That is agreeable.

Mr. Hertzberg: That is agreeable. . . . This is part of this rather complex process that we have all agreed on.

Prior to the above colloquy, the court expressed concern about the need for the exhibits should the Court of Appeals remand for further proceedings on the unsettled damage claims. The parties assured the court that the exhibits, which had been introduced into evidence by defendant Armstrong, would not be relevant or necessary to the surviving damage claims;

The Court: I don't know what the court of appeal is going to do. Let's assume they reverse it and send it back for a new trial. I assume these exhibits will still have to be used if the case is going to be retried on the underlying complaint.

Mr. Flynn: Pursuant to the issues that are remaining, Your Honor, I think that the parties' overall stipulation is such that we will not need those exhibits on any retrial if, in fact, there is a retrial.

I think Mr. Armstrong is satisfied, and I know I am satisfied, that we won't need them.

Id., pp. 2-3

After the above discussions and oral stipulations the court agreed to sign the orders: "All right. Then, the court will sign the respective orders." Id. at 7.

(f) Accordingly, on December 16, 1986, all documents, including exhibits, originally placed in the custody of the clerk of the Superior Court, were returned to representatives of plaintiff Church. See Declaration of Kenneth Long.

(g) On December 17, 1986, prior to rendering an opinion in the pending appeal, the Court of Appeal returned to the Superior

Court the approximately fifty exhibits which had been lodged with the Court of Appeal. On the same date, pursuant to the order of Judge Breckenridge, the Superior Court clerk returned those exhibits to representatives of the plaintiff Church, along with certified copies of the trial court exhibits for which the originals had been returned the previous day. See Long Declaration.

(h) On the following day, December 18, 1986, the Court of Appeal, which had been informed of the partial settlement, rendered an opinion dismissing the pending appeal as premature because at the time the appeal was heard, the Superior Court had not disposed of defendant Armstrong's cross-complaint.

(i) Subsequent to the Court of Appeal's remand, plaintiffs decided to re-notice the appeal from Judge Breckenridge's decision, but only with respect to the surviving claim for damages. This was so because those aspects of Judge Breckenridge's decision dealing with injunctive relief and return of the documents had been rendered moot by the settlement of those claims and the return to the Church of all the documents Armstrong had taken, including the trial exhibits.

Accordingly, Corydon's arguments are not only frivolous, but reveal a studied attempt to mislead the court on both the law and the facts. It is inconceivable that counsel would cite to C.C.P. §§1952.2 and 1952.3, but not notice the existence of section 1952(a) or bring this statute to the court's attention. It is inconceivable that counsel would refer to the hearing of December 11, 1986 but not notice that Judge Breckenridge clearly was aware of the then-existing appeal, and

not notice the court-approved written and oral stipulations for the return of the exhibits then held by the Court of Appeal, once that court rendered its opinion.

In this light, Corydon/Morantz's reference to the crime of taking public records is highly improper and irresponsible, as is their suggestion that Judge Breckenridge was misled as to the scope of the settlement or the existence of an appeal. The motion must be denied.

II. Corydon Has Not Properly Sought Discovery of the Five Sealed Documents From The Church in the Course of His Pending Litigation Against Jentzsch and Carmichael, in Which All Discovery Has Been Stayed

Corydon also moves for an order permitting him to inspect and copy the five documents maintained under seal in this case, which were marked for identification but were not entered into evidence.[4/] These are the same five documents which are the subject of the pending United States Supreme Court case (United States v. Zolin, No. 88-40) and which this court excluded from its prior order permitting Corydon access to the file, "without prejudice to a further motion specifically directed to these documents in connection with discovery in the other case [i.e., the Jentzsch Carmichael case for which Corydon seeks to discover them]."

At the hearing on November 30, 1988, this court made clear that Corydon should seek discovery in the normal course in the Jentzsch/Carmichael case. The court stated:

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4. The documents are identified as 500-5K, 500-5L, 500-50, 500-5P, and 500-60.

> You can give them discovery on the subjects of your lawsuit. And I'm saying right now that they are required in answering all of your discovery to indicate whether or not any of these five documents are responsive to your discovery request. And if they so indicate that these documents or one or two of them or whatever are responsive, then you will be able to make a discrete motion with regard to those documents. If they indicate that, no, none of these documents are responsive to any of your discovery, then you may make a motion, if you are so inclined, to have the court review those documents to determine whether or not they have truthfully responded to your discovery.

Mr. Morantz objected to the Court's order on the grounds that the opposing parties in the Jentzsch/Carmichael case are two individuals, and not the plaintiff Church. The court interjected, "That's not correct. You can do discovery from a non-party. . . . You can do a deposition, written deposition questions to a non-party."

Corydon now has come back to this court without having followed the usual discovery procedures contemplated by this court on November 30. Further, in doing so, he has concealed relevant information about the nature and status of his discovery requests.

First, the interrogatories at issue were served only upon the two individual plaintiffs in the Jentzsch/Carmichael case, and not the plaintiff herein. Thus, the predicate for seeking relief in this court has not been met; i.e., a proper discovery request directed to the Church in the Jentzsch/Carmichael action.

Second, while Corydon identifies some of the grounds of objection raised by Jentzsch and Carmichael to the interrogatories served by Corydon, amazingly he fails to inform

the court of the dispositive portion of their responses, which state in each instance that "plaintiff has no knowledge of or access to the court file in Church of Scientology of California v. Armstrong . . . or documents related to the subject matter of that litigation." See Corydon's Exhibit P, Jentzsch Response pp. 6-10; Carmichael Response, pp. 6-8, 10.

Third, even if Corydon believed that Jentzsch and Carmichael, despite their answers to the interrogatories, were in a position to provide meaningful discovery with respect to the documents under seal in this action, he has not undertaken proper steps to compel such discovery. Pursuant to Law Department Policy Manual section 355, Corydon has made no effort to engage in a meet-and-confer to attempt to resolve or narrow the questions about the availability or propriety of such discovery. Similarly, Corydon has not filed a motion to compel in the Jentzsch/Carmichael case. See supporting Declaration of Timothy Bowles. Instead, he has filed what is, in effect, a motion to compel before this court against the wrong party and without having engaged in the proper procedures in his own action.

Finally, the reason Corydon has sought to pursue his discovery in this case, as opposed to his own case, is that he is forbidden to pursue discovery in his own case, a fact Mr. Morantz somehow chose to omit from his papers. On January 12, 1989, the Jentzsch/Carmichael court orally stayed all discovery and motions to compel in that case pending determination of Corydon's pending motion for summary judgement. A formal order to such effect was drafted by Mr.

Morantz, signed by Judge Feinerman, and sent to the clerk by Mr. Morantz on January 25, the day before Mr. Morantz filed his present motion. See Bowles Declaration, and exhibits.

Not only does the court's stay order require denial of the instant motion, but it further requires that this court suspend Mr. Morantz's right to access the file herein. Such access was granted for the limited purpose of permitting Mr. Morantz discovery in the Jentzsch/Carmichael cases. Since such discovery is stayed, so should Mr. Morantz's access be stayed. This is especially true given the selective nature of the "facts" Mr. Morantz has chosen to provide to this court.

Dated: February 13, 1989

Respectfully submitted,

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